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# President Rule under Article 356: Boon or Bane?

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## ABSTRACT

*The imposition of President's Rule under Article 356 of the Indian Constitution is a subject of intense debate, often questioning its utility and implications. This abstract explores whether it serves as a boon or a bane to the Indian democratic framework. On one hand, proponents argue that it provides a mechanism to address breakdowns in constitutional machinery in states, ensuring the maintenance of law and order and protecting democratic values. They contend that it acts as a safety net, preventing chaos and allowing for effective governance in exceptional circumstances. However, critics argue that its frequent misuse by central governments poses a threat to federalism and undermines the autonomy of states. They highlight instances of political opportunism and abuse of power, where President's Rule has been imposed for partisan interests rather than genuine constitutional concerns. Additionally, concerns over its impact on democratic principles such as popular sovereignty and the principle of separation of powers are raised. This abstract delves into the complexities surrounding President's Rule, analyzing its historical context, legal framework, and socio-political implications to provide a comprehensive understanding of its role in the Indian polity.*

**Keywords:** *President's Rule, Article 356, Indian Constitution, Federalism.*

## I. INTRODUCTION

The political history of India has always been riddled with interspersed spells of discord, unrest, and disintegration. This includes some inconsistent intervals of peace, stability, and togetherness. It is often seen that the most powerful kingdoms developed into empires, taking the surrounding territories under their rule, and expanding their influence nearly to India's natural borders. However, it is also a sad truth that excessive centralization frequently backfired and set off a domino effect among several factors that caused division in the dominion. The dissenting forces grew powerful and forced the central authority to disintegrate whenever the latter became decadent and weak. This is also one of the major causes that attracted foreigners

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such as Mughals and Britishers to take over the nation and control it for a long period of time.<sup>3</sup>

After taking lessons from past events, the founding fathers and mothers of our Constitution intended to include certain safeguards against this plausible disintegration of the states from the Indian Union. It was suggested that the Governor of the province should have the authority to declare himself the sole administrator of that particular province for two weeks. This needs to be done only when he/she believes that the federation established by this Constitution has been broken down. The Governor would then report the matter to the President of the Union, informing him that the machinery had failed. Hence, he had taken over the governance himself by issuing a proclamation. Thereafter, the President would be accredited to act upon this Report under the provisions of proposed Article 278 of the Constitution.<sup>4</sup>

This proposition can be traced back to the Government of India Act, 1935. Section 45 read with Section 93 of this Act provides that the Governors have the explicit authority to assume control of the province's government by using some emergency powers. This was done to ensure that the final say in the matter of governance in provinces always remained in the hands of the British only.

The proposal enshrined under Article 278 was extensively discussed in the Constituent Assembly, and was later adopted as Article 356 of the Constitution of India which prescribes "Provisions in case of failure of constitutional machinery in States", also known as 'State Emergency' or 'President's Rule.'

## II. CONSTITUTIONAL MANDATES UNDER PRESIDENT'S RULE

The Union of India has a responsibility to make sure that the government of each state is operating in conformity with the directives laid down in the Constitution.<sup>5</sup> Consequently, Article 356 prescribes that the President, acting as the head of the Union, may issue a proclamation upon his/her satisfaction that the government of a state cannot continue in conformity with the guidelines of the Constitution. With this, he/she may declare that:<sup>6</sup>

- (a) President takes over all duties associated with the state's Executive branch or any other authority, except the functions of the High Court; and
- (b) Parliament may exercise or be under the charge of the state Legislature to exercise the

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<sup>3</sup> Justice R. S. Sarkaria, Report of Commission on Centre-State Relations 5 (27 October 1987).

<sup>4</sup> Sunil Destha, *President's Rule in the States: Constitutional Provisions & Practices* (Deep and Deep Publications 1993)14, 37.

<sup>5</sup> The Constitution of India, 1950, Art. 355.

<sup>6</sup> The Constitution of India, 1950, Art. 356(1).

powers of making legislation for the state;

(c) President is creating whatever incidental and consequential clauses that are appropriate or necessary to give effect to the desired outcomes of this commandment. This may include regulations that suspend the implementation of any part or chapter, either wholly or partially, of the Constitution that is pertaining to a state body or its institution.

In simple words, we may say that the Union would take over all state administrative functions, aside from that of the judiciary, utilizing such a proclamation. Thereafter, a second declaration may be issued to amend or revoke this previous promulgation.<sup>7</sup>

This pronouncement may be based upon the contents of the report received from the Governor of that state, or it may be for any other reason deemed suitable to the President. Moreover, in an instance where any state has completely disregarded some instructions issued by the Union government in the course of the Union exercising its executive authority over the state; then also, the President may issue such a proclamation.<sup>8</sup>

It is important to mention here that such protestation needs to be approved by the Parliament. In the absence of the same, it has a life of two months only. If it was issued at the time when Lok Sabha was dissolved or if the dissolution had occurred within these two months, then it needs to be sanctioned within 30 days of the re-constituted Lok Sabha's first meeting. Otherwise, it shall cease to be in operation.<sup>9</sup>

The length of the President's rule can be prolonged for up to three years (six months at a time) by way of passing resolutions in both Lok Sabha and Rajya Sabha.<sup>10</sup> However, to extend the period beyond one year, two additional requirements, set out by the Constitution (Forty-fourth Amendment) Act of 1978, must be fulfilled. They are:

- a. A proclamation is in effect throughout the entirety of India, or in any region of the state, as the situation may require, at the moment when the resolution of extension is being tabled; and
- b. The Election Commission verifies that it is essential that the state emergency continues for the duration mentioned in the resolution due to the challenges in holding a general election for the state's legislative assembly.<sup>11</sup>

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<sup>7</sup> The Constitution of India, 1950, Art. 356(2).

<sup>8</sup> The Constitution of India, 1950, Art. 365.

<sup>9</sup> The Constitution of India, 1950, Art. 356(3).

<sup>10</sup> The Constitution of India, 1950, Art. 356(4).

<sup>11</sup> The Constitution of India, 1950, Art. 356(5).

### III. EFFECT OF PROCLAMATION OF PRESIDENT'S RULE

When the Proclamation suspends the state legislature under Article 356, it will be open:

- (i) for Parliament to give the authorisation to enact laws for the state to the President, or any other authority designated by him;
- (ii) for Parliament, or for the President, or any authority in whom the capacity to make laws is conferred, to make laws bestowing authority and imposing responsibilities, or authorising imparting of powers and entrusting of duties, on the Union or its officers and authorities;
- (iii) for the President to allow payments, waiting for Parliament affirmation, from the state's Consolidated Fund at the time when the Lok Sabha is not in session.<sup>12</sup>

The law legislated by the President or Parliament during the period of the Article 356 proclamation does not automatically become ineffective upon its expiration. Even though the revocation of emergency ends the Union's authority to enact laws for the state in question on the subject contained in the State List, the laws enacted during this duration remain in effect until they are modified or repealed by the state legislature. Thus, we can say that legislation passed during this time remains in force even after the declaration ends. Nonetheless, the state legislature has the capacity to change, revoke, or amend such a statute.<sup>13</sup>

In relation to the state's executive branch, the President may take on all functions of the state government during this phase. Moreover, he/she may exercise all those powers that the Governor may exercise following the proclamation. After taking over the government's responsibilities, the President often bestows responsibility on the Governor to carry out these duties. The Council of Ministers resigns *suo moto* after the suspension/dissolution of the legislation. In all his scenarios, the Governor oversees the administration as a Union representative in accordance with the proclamation under Article 356(1).<sup>14</sup>

### IV. JUDICIAL PRECEDENTS ON PRESIDENT'S RULE

Two of the most important cases surrounding the controversy of the President's rule were "*State of Rajasthan & Ors. v. Union of India*"<sup>15</sup> and "*S.R. Bommai v. Union of India*."<sup>16</sup> In the former, the Apex Court made many important observations regarding judicial review of the

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<sup>12</sup> The Constitution of India, 1950, Art. 357(1).

<sup>13</sup> The Constitution of India, 1950, Art. 357(2).

<sup>14</sup> *Badrinath v. Government of Tamil Nadu and Ors.*, AIR 2000 SC 3243.

<sup>15</sup> AIR 1977 SC 1361.

<sup>16</sup> AIR 1994 SC 1918.

commandment made under Article 356 of the Constitution. Some of them are:

- i. The Court can not impede the Union government's authority under Article 356 for the mere reason that the take-over is done with a political motive;
- ii. The Court is prohibited under Article 74(2) from looking into the existence, character, or substance of ministerial advice given to the President;
- iii. The Court cannot judicially review the President's satisfaction for any reason unless Article 356 is used in a specific circumstance. Such proclamation must be demonstrated to be so blatantly irrational and absurd as it amounts to a patent misuse of this clause or a clear abuse of authority in light of acknowledged facts.

With this, the Apex Court made it clear that it would refrain from examining the proclamation under Article 356 until there was an explicit violation of the Constitution.

The aforementioned position continued for a very long time and was nullified only when a Nine Judge Bench of the Apex Court in *S.R. Bommai* overturned the *Rajasthan* verdict. In this, the Supreme Court made the following pronouncements:

- a. A state legislative assembly's dissolution by presidential proclamation is open to judicial review;
- b. When a new political party takes control at the Union level, opposition-ruled state governments are not to be completely eradicated;
- c. The Court may even re-establish the assembly if the President's rule is enforced for political reasons;
- d. It is not viable to dissolve the state assembly and impose the President's rule simultaneously;
- e. Dissolution of the state assembly is contingent upon approval of President's rule by Parliament;
- f. The Union government may be ordered by the Supreme Court or a High Court to reveal the information that justifies the imposition of Presidential rule on a state.
- g. The power under Article 356 of the Constitution is not unlimited in nature;
- h. Prerequisite material must exist in order to create the satisfaction needed to enforce the President's rule.
- i. The issue regarding majority of the government in the assembly needs to be resolved on the floor of the house rather than in the Governor's chamber i.e., it must be decided

after a vote of confidence/no-confidence.

Through this verdict, the Supreme Court made an attempt to protect the federal character of India by regulating the unfettered powers of the Union in the matter of Article 356 of the Constitution.

Apart from this *locus classicus*, the Apex Court has clarified in “*Rameshwar Prasad & Ors. v. Union of India & Anr.*”<sup>17</sup> that when Article 356 refers to the “satisfaction of the President,” it really refers to the Union Council of Ministers’ or Union Cabinet’s satisfaction. If the Cabinet bases its “satisfaction” on the Governor’s report, it should also confirm the accuracy of the information before hastily accepting the report in its entirety. Under this Article, there is absolutely no satisfaction if the Governor had deceived the Council of Ministers and acquired a proclamation from the President.

## V. ARTICLE 356: BOON OR BANE?

In Indian politics, the imposition of the President’s Rule under Article 356 is a contentious and much-debated topic. One side of the discussion contends that it is an essential instrument for preserving constitutional stability when the democratic system has broken down, there is corruption, the state’s government is governing in an autocratic system, etc. It guarantees the preservation of citizens’ rights and the efficient operation of administration by enabling the central authority to step in and re-establish law and order. Furthermore, it is occasionally viewed as a corrective action meant to stop state governments from acting in an undemocratic manner or breaking constitutional precepts.

But the President’s rule also contains issues with federalism and democratic ideals. Opponents contend that the Central government’s mishandling of it might threaten the state’s sovereignty and erode federalism. It is important to remember that both are major cornerstones of the Constitution and the Indian democracy will have a huge difficulty in surviving when both are repudiated by the individuals sitting in power. In several cases, it has been implemented for political purposes, instead of legitimate concerns about governance, which has resulted in charges of authoritarianism and power concentration. Moreover, protracted periods of emergency can cause administrative gridlock and impede state development initiatives since bureaucrats, rather than elected officials, become the primary authority for making decisions.

President’s rule can be a boon as well as a bane when viewed from different angles and in different contexts. While going through its history, we can see that the addition of Article 356

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<sup>17</sup> AIR 2006 SC 980.

to the Constitution was made possible by a number of circumstances. First, the partition in 1947 caused extensive inter-communal bloodshed and managerial difficulties, underscoring the necessity of a strong system to provide governance and uphold law and order in governments going through such crises. Second, it gave authority to the Union government to step in when a state government disobeys the constitution thereby protecting the unity and integrity of the country. Thirdly, the constitutional framers understood that there is always a possibility of disputes among citizens owing to the huge diversity in cultural, linguistic, and socioeconomic identities of the people. Considering all these aspects, it can be said that a country like India needs a provision like President's rule to maintain its unity. If states are allowed to function in an unrestrained manner, they may even decide to sever themselves from the Union of India.

However, at the same time, we see the Union government always tends to use this provision as a weapon to fulfill its political ambition. While refraining from mentioning illustrations, it can be sufficiently submitted that there is no doubt that such kind of back-channel entry into the government of the state is always considered to be a backstab upon the people of the state. They choose one set of individuals to govern them but the Union government arbitrarily rules through the hands and mind of the Governor.

## **VI. RECOMMENDATIONS**

The following suggestions should be explored by the stakeholders so that the abuse of Article 356 may be prevented and the federal character of the nation may be kept intact:

- i. The resolution for approval for the President's rule should be passed by a special majority, i.e., 2/3<sup>rd</sup> of the members present & voting, of the Parliament;
- ii. The President should seek a Report under Article 356 from a panel of three members consisting of the Governor, Chief Minister, & Leader of Opposition of the concerned state;
- iii. The Report seeking the President's Rule in the State should be made available for public scrutiny;
- iv. The President should seek a response from the government of the concerned state, and consider the same, before proclaiming the President's rule;
- v. The recommendations made by the Sarkaria Commission should be implemented in letter & spirit;

## **VII. CONCLUSION**



A complicated constitutional mechanism known as Article 356 of the Indian Constitution allows for the imposition of the President's rule in extreme situations in which a state's constitutional system malfunctions. Although it provides a means of preserving democracy and guaranteeing governance in states that are experiencing crises like a breakdown in law and order or political unrest, its implementation frequently gives rise to questions about federalism and democratic values. Union governments have come under fire for their frequent abuse or arbitrary application of Article 356. However, the President's rule is a necessary evil and may be extremely helpful in re-establishing stability and defending democratic ideals if it is used sparingly and in accordance with constitutional norms.

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